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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 STUART W. FUHLENDORF,

15 Defendant.

CASE NO. C09-1292 MJP

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL
JUDGMENT AS A MATTER OF
LAW

16 This comes before the Court on Plaintiff's motion for partial judgment as a matter of law.
17 Having heard Plaintiff's oral motion on May 5, 2011 and reviewed Defendant Stuart W.
18 Fuhendorf's response (Dkt. No. 311), the Court DENIES Plaintiff's motion for partial judgment
19 as a matter of law.

20 **Discussion**

21 Under Rule 50 of the Federal Rules of Civil Procedure, a court should render judgment as
22 a matter of law when "a party has been fully heard on an issue and there is no legally sufficient
23 evidentiary basis for a reasonable jury to find for that party on that issue." Fed. R. Civ. P. 50(a).
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1 In other words, the motion should be granted only if “there is no legally sufficient basis for a
2 reasonable jury to find for that party on that issue.” Reeves v. Sanderson Plumbing Products,
3 Inc., 530 U.S. 133, 149 (2000). In ruling on a Rule 50 motion, the Court is not to make
4 credibility determinations or weigh the evidence and should view all inferences in the light most
5 favorable to the nonmoving party. Id. at 150.

6 Plaintiff Securities and Exchange Commission (“SEC”) seeks partial judgment as a
7 matter of law with respect to its three negligence-based claims: Claim Two (“Securities Act
8 Claim”), Claim Four (“Books and Records Regulatory Claim”), and Claim Six (“Statements to
9 Accountants Claim”). The SEC believes Fuhlendorf acted, at the least, negligently with respect
10 to the CDI transaction in December 2006 and the Intelligientias transaction in March 2007 as a
11 matter of law. The Court disagrees.

12 First, a reasonable juror may believe Fuhlendorf did not act negligently in recognizing
13 revenue for the CDI transaction. Although Fuhlendorf received an email from CDI in September
14 2006 suggesting Fuhlendorf knew invoice terms were irrelevant, the email relates to an earlier
15 transaction not at issue in this action. A reasonable juror may find an email about a separate
16 transaction insufficient to establish negligence related to the December 2006 transaction.
17 Similarly, even though CDI lacked a purchase order from its end-user, a reasonable jury may
18 find Fuhlendorf did not act negligently when recognizing the CDI transaction as revenue. A
19 juror may find significant that, at the time, Isilon’s sell-in revenue recognition policy expressly
20 required only the identification of a reseller’s end user and no purchase order from the end user
21 was required. See Offenbecher Decl., Ex. F (April 18, 2011 Transcript) at 143:8-19; 150:7-
22 151:7. Since a reasonable jury could find Fuhlendorf did not falsify Isilon’s books and records
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1 or make a false statement, the Court finds judgment as a matter of law inappropriate based on the
2 CDI transaction.

3 Second, a reasonable juror could likewise find Fuhlendorf did not act negligently in
4 recognizing revenue for the Intelligentias transaction. Although there is evidence that Isilon had
5 conducted no due diligence when it agreed to purchase Intelligentias software, the facts do not
6 conclusively establish the Intelligentias transaction was a round-trip transaction and/or
7 contingency as a matter of law. Based on testimony at trial, the purchase of Intelligentias
8 software may have had a legitimate business purpose. (See id., Ex. J (April 13, 2011 Transcript)
9 at 86:16-25, 87:8-15, 107:20-108:11, 136:3-14 (Bigelow); id. Ex. D (April 20, 2011 Transcript)
10 at 28:7-15, 44:22-45:3 (Scollard)). Likewise, a jury may conclude Fuhlendorf is not liable since
11 the terms of payment appear to have been disclosed to Isilon's Audit Committee. (See id. Ex. I
12 (April 22, 2011 Transcript) at 147:24-148:6.) Since a reasonable jury could find Fuhlendorf did
13 not falsify Isilon's books and records or make a false statement, the Court finds judgment as a
14 matter of law inappropriate based on the Intelligentias transaction.

15 Conclusion

16 The Court DENIES the SEC's motion for partial judgment as a matter of law. The clerk
17 is ordered to provide copies of this order to all counsel.

18 Dated this 4th day of June, 2011.

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22 Marsha J. Pechman
23 United States District Judge
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